



## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petition for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments identified by Docket No. MSHA-2022-054 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2022-054.
2. *Fax:* 202-693-9441.
3. *Email:* [petitioncomments@dol.gov](mailto:petitioncomments@dol.gov).
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

*Attention:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), [Petitionsformodification@dol.gov](mailto:Petitionsformodification@dol.gov) (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

## **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

## **II. Petition for Modification**

Docket Number: M-2022-012-M.

Petitioner: Nyrstar Tennessee Mines – Gordonsville, LLC, 120 Zinc Mine Circle, Gordonsville, Tennessee, 38563.

Mine: Middle Tennessee Mine, MSHA ID No. 40-00864, located in Smith County, Tennessee.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of the refuge chamber's internal air supply, versus the use of a compressed air line, to provide air for the underground refuge chamber.

The petitioner states that:

- (a) The application of 30 CFR 57.11052(d) requiring the use of a compressed air line would be unsafe under the conditions present at the mine.
- (b) The mine is an underground zinc mine utilizing both random room and pillar mining and longitudinal long-hole stoping. In both methods, a single development drift is driven through waste rock adjacent to the ore body. When this drift reaches planned elevations, level accesses are developed to provide entry points to the ore body for exploration and later ore production. Once the level development and exploration are completed at a planned elevation, the ore is extracted either perpendicular (random room and pillar mining) or parallel to the strike of the ore (longitudinal stoping).
- (c) The mine has been in operation since 1968, and the petitioner has operated the Mine since 2009. During the second quarter of 2022, the mine typically had 25 stopes associated with production, and approximately 15 main development drifts in which exploration and development were occurring. The precise number of stopes and drifts may vary slightly from one month to the next.
- (d) There are 22 to 33 miners working in the mine.
- (e) There are five active refuge chambers located throughout the mine. The locations are subject to change depending on the mining direction.
- (f) Each refuge chamber is a self-contained chamber with its own sources for electrical power, breathable air, water, food, and a lavatory. Designed to physically shield miners following an underground emergency, each refuge chamber can provide electrical power and breathable air to eight occupants for a minimum of 48 hours.
- (g) The refuge chambers are compliant with the following parameters of 30 CFR part 7 Subpart L:
  - (1) Breathable air provided via compressed oxygen or compressed air;
  - (2) Oxygen supply rate at 1.32 cubic feet per hour per person;

(3) Compressed air supply rate at 12.5 cubic feet per minute per person.

(h) In addition to medical grade oxygen cylinders and compressed air cylinders, each refuge chamber has been supplied with a compressed air line with an Ingersoll-Rand 80 gallon electric compressor outside of the chamber for more than 15 years.

(i) A monitoring/diversion system will be installed to prevent any compressed air from entering the 29 South Refuge Chamber in case the compressed air carbon monoxide level reaches or exceeds 10 parts per million (PPM). The other refuge chambers do not require the installation of this diversion system. If the petition is granted, the diversion system will not be used.

(j) Underground operations take place in a dynamic environment. Exploration and development areas are dominated by self-propelled mobile equipment and blasting activities.

(k) The refuge chambers must be relocated from time to time. The connection of air lines must be considered when positioning the refuge chambers

(l) Damage to the refuge chamber puts miners at risk as it may not function as intended. Each time a refuge chamber is relocated, there is a potential that it will be damaged. Similarly, if a compressed air line needs to be run and connected at each new location, there is a chance that the line or the connections will be damaged. Potential damage to the refuge chamber, the external air line, and the compressor increases each time a chamber and the components are moved, disconnected, rerouted, reconnected, and tested. The risk of damaging the lines and connectors is eliminated by relying on the refuge chamber's medical grade oxygen cylinders.

(m) Oxygen discharged from damaged or leaking air lines could fuel a potential fire, making the compressed air lines more of a potential hazard than a source of breathable air. Removing compressed air lines removes this hazard.

(n) The air compressors are vulnerable to power failure and damage. However, the compressed medical oxygen cylinders and compressed air cylinders are secured within the refuge chamber and are not subject to damage or power failure. The medical grade oxygen

cylinders will at all times guarantee miners no less than the same measure of protection afforded by the standard with no diminution of safety to miners.

The petitioner proposes the following alternative method:

- (a) Using the self-contained refuge chamber's internal air supply that provides a minimum of a 48-hour internal air supply for up to 8 miners.
- (b) Securing medical grade oxygen cylinders and compressed air cylinders within the refuge chamber so they are not subject to damage or power failure.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

**Song-ae Aromie Noe,**

*Director,*

*Office of Standards, Regulations, and Variances.*

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